

March 5, 2010

RE: Raised H.B. 5425, Session Year 2010

Dear Senator Gaffney, Representative Fleischmann, and the Education Committee members:

I am an advocate in Connecticut assisting parents of children with special needs in securing their special education and disability rights. I am also the parent of a 12 year old boy with autism. I am writing in strong opposition to Raised H.B. 5425. Please accept this letter as my testimony. The provision of this bill which shifts the burden of proof from the school district to the party bringing suit will seriously weaken the rights of parents who seek redress through their procedural safeguards and curtails the ability of students with disabilities to access an appropriate education. This provision will invite both procedural and substantive harm to students with disabilities.

The state of Connecticut has long recognized that the burden of proof in school disputes rests with the schools themselves as the schools have an affirmative obligation to provide FAPE--a free and appropriate public education. The school controls the record--they write it and maintain it. They control the information that parents receive with regard to their children's progress. The district has at its disposal the financial wherewithal to hire expert witnesses to make its case. The parent has none of this. The parent bringing suit already has to present first, in due process. The school does not have to defend the appropriateness of its program--they merely have to respond to the parent's case. Shifting burden of proof to the party bringing suit would add yet another challenge to the already Sisyphean struggle to access one's rights under IDEA. To begin with, due process is not a level playing field--schools use tax dollars to hire counsel. Many parents do not have the means to hire an attorney much less have a contract with a firm. Schools have their own in-house expert witnesses, parents must hire their own experts with no expectation of reimbursement. Schools also have the benefit of having gone through due process many, many times. Parents do not and often find themselves at a loss when it comes to figuring out the procedure. The "balance" of power clearly favors the school district already. A change in the law would further erode a parent's ability to secure the education rights for his or her special needs child. This bill, if passed, would have serious financial implications for the state. While school districts might find it a financial windfall, the state will eventually end up paying for the losses--in jails, in services, in unemployment and underemployment; when an appropriate education can make all the difference--especially in the bottom line! Pay now or pay later, and it is always more expensive later...But I caution you, if we choose to pay later--the school system is no longer responsible, the state is...

Please do not shift the burden of proof to the party bringing suit in educational due process cases. The basic principle of fairness will be lost and the cost of that is simply too high! Thank you for your time and consideration in this matter

Regards,
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